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DATO' DR HJ MOHAMED HANIFFA HJ ABDULLAH & ORS

v.

B

KOPERASI DOKTOR MALAYSIA BHD AND ORS & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
ABDULL HAMID EMBONG JCA
C HELILIAH MOHD YUSOF JCA
[CIVIL APPEAL NOS: W-02-339-2005 & W-02-59-2008]
7 MARCH 2008

D ***CIVIL PROCEDURE:*** *Parties - Intervention - Addition as a party - Whether case for intervention made out - Separate legal personality - Privity of contract - Propriety of pleading - Rules of the High Court 1980, O. 15 r. 6(2)(b)(ii)*

E These were two appeals, the first being a striking out appeal and the second an intervention appeal. The original action in the court below was brought by the 2nd and 3rd respondents in the intervention appeal (as plaintiffs) against twenty defendants. Later, one Koperasi Doktor Malaysia Bhd ('KDMB'), the 1st respondent in the intervention appeal, applied to intervene in the action and be added as a co-defendant. The appellants in the intervention F appeal (the 1st, 2nd and 15th defendants in the court below) opposed the application. The judge granted the application, resulting in the intervention appeal. Later still, KDMB, as the added defendant, delivered its pleading in the form of a cross claim that was directed at the 1st, 2nd and 15th defendants. G These defendants applied to strike it out. They succeeded; hence the striking out appeal by KDMB. Relevant to this appeal was a company called Fomema Sdn Bhd ('Fomema'), which dealt with the issuance of medical reports of foreign workers in this country. Fomema had two shareholders, one Anjur Dinamik Sdn Bhd H ('ADSB') and KDMB, with the plaintiffs and the 1st, 2nd and 15th defendants being the shareholders of KDMB. In their action, the plaintiffs impugned certain transactions that had been entered into between ADSB and some of the defendants in the court I below who were not parties to either appeal. The plaintiffs, however, claimed no relief whatsoever against either ADSB or

Fomema, and instead claimed monies and other benefits from the 1st, 2nd and 15th defendants for their alleged misconduct which resulted in the plaintiffs suffering loss. KDMB based its application to intervene and be added as a defendant on two agreements (a joint venture agreement and a shareholders agreement) it had with ADSB. KDMB contended that while there was misconduct on the part of the aforementioned defendants – who were not parties to either of the agreements – the compensation for breach of duty was payable to KDMB and not to the plaintiffs. The only question requiring determination was whether the learned judge, upon these facts, was correct in holding that KDMB had made out a case for intervention.

Held (allowing the intervention appeal, and dismissing the striking out appeal)

Per Gopal Sri Ram JCA delivering the judgment of the court:

(1) It was clear from the written evidence that was put before the High Court that KDMB was not the person wronged by the alleged misconduct of the 1st, 2nd and 15th defendants. Put at its highest, the plaintiff's pleaded case and KDMB's evidence in support of its summons to intervene showed that the real victim was Fomema. Being a limited company, it enjoyed a personality that was separate and distinct from its shareholders and directors. If it suffered a loss because of what the 1st, 2nd and 15th defendants did or did not do, then it was its loss and not KDMB's loss. It was thus clear that KDMB was not affected by any loss that might have been suffered by Fomema. Hence, it was not a person that may be directly affected by any judgment that the High Court may give in the main action. That brought this court to the joint venture agreement and the shareholders agreement on which the High Court relied to permit intervention. It was submitted by KDMB that those agreements were breached. Since the 1st, 2nd and 15th defendants were not parties to those agreements, KDMB could not seek to hold them liable for any breach of those agreements by reason of the doctrine of privity of contract. KDMB must seek recourse against the parties to those agreements by way of a separate suit. What the case then came to was this. KDMB was not a necessary party because it would not be directly affected by any order

A that may be made by the High Court on the merits of the plaintiffs' claim against the existing defendants. Further, since no claim had been made against KDMB by the plaintiffs or any other existing party to the action, it had failed to bring itself within O. 15 r. 6(2)(b)(ii) of the Rules of the High Court
B 1980. Accordingly, the High Court had no jurisdiction to permit KDMB to intervene and be added as a party to the suit. In this instance, the High Court fell into serious error when exercising its discretion in the way in which it did. For these reasons, the intervention appeal ought to be allowed. It
C followed from what had been stated thus far that the striking out appeal must also fail. If KMDB ought not to have been added as a party, the propriety of its pleading could hardly arise. (paras 9, 10, 11, 12, 13, 14, 15 & 16)

D ***Bahasa Malaysia*** *Translation Of Headnotes*

Terdapat dua rayuan di sini, iaitu pertama rayuan membatal dan kedua rayuan campurtangan. Tindakan asal di mahkamah di bawah telah dibawa oleh responden kedua dan ketiga di dalam rayuan
E campurtangan (sebagai plaintif) terhadap dua puluh orang defendan. Berikutnya, satu Koperasi Doktor Malaysia Bhd ('KDMB'), responden pertama dalam rayuan campurtangan, memohon untuk campurtangan di dalam tindakan dan dinamakan sebagai defendan bersama. Permohonan ini dibantah oleh perayu-
F perayu di dalam rayuan campurtangan (defendan-defendan pertama, kedua dan kelima belas di mahkamah di bawah). Hakim, bagaimanapun, membenarkan permohonan sekaligus mencetuskan rayuan campurtangan di sini. Kemudian dari itu, selaku defendan yang baru dinamakan, KDMB mengemukakan plidingnya yang
G berupa tuntutan balas terhadap defendan-defendan pertama, kedua dan kelima belas. Defendan-defendan membalas dengan memohon untuk membatalkan tuntutan balas KDMB tersebut. Mereka berjaya dan itu mencetuskan rayuan membatal oleh KDMB di sini. Relevan kepada rayuan ini adalah sebuah syarikat yang dipanggil
H Fomema Sdn Bhd ('Fomema'), yang berurusan dengan pengeluaran laporan-laporan perubatan untuk pekerja-pekerja asing di negara ini. Fomema mempunyai dua pemegang saham, iaitu Anjur Dinamik Sdn Bhd ('ADSB') dan KDMB, dengan defendan-defendan pertama, kedua dan kelima belas sebagai pemegang-pemegang
I saham KDMB. Dalam tindakan mereka, plaintif-plaintif mencabar beberapa transaksi yang dimeterai di antara ADSB dan sebahagian

defendan-defendan di mahkamah di bawah yang bukan pihak-pihak kepada rayuan-rayuan di sini. Plaintif-plaintif, bagaimanapun, tidak menuntut sebarang relif terhadap ADSB atau Fomema, sebaliknya menuntut sejumlah wang dan faedah-faedah lain dari defendan-defendan pertama, kedua dan kelima belas atas dakwaan bahawa mereka telah melakukan salahlaku yang menyebabkan plaintif-plaintif menanggung kerugian. KDMB mengasaskan permohonannya untuk campurtangan dan dinamakan sebagai defendan atas dua perjanjian (perjanjian usahasama dan perjanjian pemegang saham) yang dimeterainya dengan ADSB. KDMB berhujah bahawa sementara memang terdapat salahlaku di pihak defendan-defendan di atas – yang bukan pihak kepada kedua-dua perjanjian – pampasan kerana kemungkiran tanggungjawab harus dibayar kepada KDMB dan bukannya kepada plaintif-plaintif. Persoalan tunggal yang memerlukan jawapan adalah sama ada, berdasarkan fakta kes di sini, yang arif hakim betul bilamana memutuskan bahawa KDMB telah berjaya membuktikan suatu kes untuk campurtangan.

Diputuskan (membenarkan rayuan campurtangan dan menolak rayuan membatal)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Adalah jelas dari keterangan bertulis yang ada di hadapan Mahkamah Tinggi bahawa KDMB bukanlah seorang yang teraniaya oleh salahlaku yang didakwa defendan-defendan pertama, kedua dan kelima belas. Di tahapnya yang tertinggi pun, kes plaintif-plaintif seperti yang diplidkan serta keterangan-keterangan KDMB yang menyokong saman untuk campurtangannya menunjukkan bahawa mangsanya yang sebenar adalah Fomema. Sebagai sebuah syarikat berhad, Fomena memiliki personaliti yang tersendiri dan terasing dari pemegang-pemegang saham atau pengarah-pengarahnya. Jika ia mengalami kerugian disebabkan oleh apa yang dilakukan atau tidak dilakukan oleh defendan-defendan pertama, kedua dan kelima belas, maka kerugian itu adalah kerugiannya sendiri dan bukan kerugian KDMB. Jelas bahawa KDMB tidak terjejas oleh apa-apa kerugian yang mungkin dialami oleh Fomema. Oleh itu, KDMB bukanlah seorang yang terjejas secara langsung oleh apa-apa penghakiman yang mungkin dibuat oleh Mahkamah Tinggi di dalam tindakan utama. Ini membawa mahkamah ini

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Case(s) referred to
Law Kam Loy & A ***(refd)***
Lian Keow Sdn Bhd *CLJ (Rep) 182 F*
Macaura v. Northern
Maxwell v. Keun [19
Pegang Mining Co L
Salomon v. Salomon
Spelling Goldberg Pr ***(refd)***
Sri Permata Sdn Bh *Bhd (Interveners)*
Vandervell Trustees L

kepada perjanjian usahasama dan perjanjian pemegang saham yang menjadi pergantungan Mahkamah Tinggi dalam membenarkan campurtangan. Telah dihujahkan oleh KDMB bahawa perjanjian-perjanjian ini telah dimungkiri. Namun, oleh kerana defendan-defendan pertama, kedua dan kelima belas bukan pihak kepada perjanjian-perjanjian tersebut, maka, berdasarkan doktrin priviti kontrak, KDMB tidak boleh menjadikan mereka bertanggungan atas sebarang kemungkiran perjanjian-perjanjian tersebut. KDMB perlu menghalakan tindakannya terhadap pihak-pihak kepada perjanjian-perjanjian tersebut melalui satu tindakan yang berasingan. Kes di sini boleh dirumuskan sebagai berikut. KDMB bukan satu pihak yang perlu kerana ia tidak terjejas secara langsung oleh apa-apa perintah yang mungkin dibuat oleh Mahkamah Tinggi berdasarkan merit tuntutan plaintif-plaintif terhadap defendan-defendan semasa. Selain itu, oleh kerana tiada tuntutan dibuat oleh plaintif-plaintif atau pihak-pihak semasa di dalam tindakan terhadap KDMB, maka KDMB tidak boleh menempatkan dirinya di dalam lengkongan A. 15 k. 6(2)(b)(ii) Kaedah-kaedah Mahkamah Tinggi 1980. Akibatnya, Mahkamah Tinggi tiada bidangkuasa untuk membenarkan KDMB campurtangan dan dinamakan sebagai satu pihak di dalam tindakan. Dalam kes di sini, Mahkamah Tinggi telah melakukan kesilapan yang serius apabila melaksanakan budibicaranya sepertimana yang dibuatnya. Atas alasan-alasan ini, rayuan campurtangan haruslah dibenarkan. Ianya mengikut bahawa rayuan membatal semestinya gagal. Jika KDMB tidak seharusnya dinamakan sebagai satu pihak, maka soal keteraturan plidingnya tidak berbangkit sama sekali.

Case(s) referred to:

Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors [2005] 3 CLJ 355 CA ***(refd)***

Lian Keow Sdn Bhd v. Overseas Credit Finance Bhd [1982] CLJ 350; [1982] CLJ (Rep) 182 FC ***(refd)***

Macaura v. Northern Assurance Co Ltd & Ors [1925] AC 619 ***(refd)***

Maxwell v. Keun [1928] 1 KB 645 ***(refd)***

Pegang Mining Co Ltd v. Choong Sam & Ors [1969] 2 MLJ 52 ***(refd)***

Salomon v. Salomon & Co Ltd [1897] AC 22 ***(refd)***

Spelling Goldberg Productions v. B.P.C. Publishing Ltd [1981] RPC 280 ***(refd)***

Sri Permata Sdn Bhd v. PPH Realty Sdn Bhd; Lingkaran Cemerlang Sdn Bhd (Interveners) [2001] 7 CLJ 633 HC ***(refd)***

Vandervell Trustees Limited v. White [1971] AC 912 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 15 r. 6(2)(b)

(Civil Appeal No: W-02-339-2005)
For the appellants - L Sabapathy (S Bhuvaneswary with him); M/s Logan Sabapathy & Co
For the 1st respondent - Vinayak Pradhan (Lim Chee Wee & Ruth Garnet Maran with him); M/s Skrine
For the 2nd & 3rd respondents - Harpal Singh Grewal (Jasvinjit Singh with him); M/s AJ Ariffin, Yeo & Harpal
For the 4th & 5th respondents - Abdullah Abdul Rahman; M/s Cheang & Ariff
For the 6th respondent - Saranjit Singh; M/s Vasdev Bakshani & Assoc (MOB by L Sabapathy)

(Civil Appeal No: W-02-59-2008)
For the appellant - Vinayak Pradhan (Lim Chee Wee & Ruth Garnet Maran with him); M/s Skrine
For the respondents - L Sabapathy (S Bhuvaneswary with him); M/s Logan Sabapathy & Co
For the plaintiffs in cross claim in the High Court - Harpal Singh Grewal (Jasvinjit Singh with him); M/s AJ Ariffin, Yeo & Harpal
For the 3rd defendant in cross claim in the High Court - Saranjit Singh; M/s Vasdev Bakshani & Assoc (MOB by L Sabapathy)
For the 4th, 6th & 12th defendants in cross claim in the High Court - Abdullah Abdul Rahman; M/s Cheang & Ariff

[Appeal from High Court, Kuala Lumpur; Civil Suit No: D2-22-1412-2003]

Reported by Suresh Nathan

JUDGMENT

Gopal Sri Ram JCA:

[1] There are two appeals before us. The first is W-02-59-2008 (the striking out appeal); the second, W-02-339-2005 (the intervention appeal). At the suggestion of counsel on both sides we agreed to take both appeals together. But we heard arguments on the intervention appeal first as its result will have a direct bearing upon the striking out appeal. It will emerge later why this is so. There is a brief history to these appeals. Here it is.

[2] The original action in the court below was brought by the 2nd and 3rd respondents in the intervention appeal (as plaintiffs) against twenty defendants. Later, Koperasi Doktor Malaysia Berhad (KDMB) the 1st respondent in the intervention appeal applied to intervene in the action and be added as a co-defendant. The application was opposed by the appellants in the intervention appeal (the 1st, 2nd and 15th defendants in the court below). The judge who heard the application granted it. The 1st, 2nd and 15th defendants appealed that decision. This, then, is the intervention appeal. Later still, KDMB as the added defendant delivered its pleading in the form of a cross claim. It was directed at 1st, 2nd and 15th defendants (the appellants in the intervention appeal). These defendants applied to strike it out. They succeeded. KDMB has appealed against the order striking out its pleading. So much for the history. Now for some of the facts of immediate relevance.

[3] There is a company called Fomema Sdn Bhd (Fomema). It is the 20th defendant in the court below and the 4th respondent in the intervention appeal. Now, if you want to employ a foreign worker, say, a maid for your home, you have to satisfy the relevant authorities that he or she is medically fit. For that purpose the worker has to be medically examined. You have to register with Fomema to have that done because the examination must be conducted and the report issued by a doctor on Fomema's panel of doctors. You cannot go directly to a doctor of your choice. Fomema therefore has a monopoly over the issuance of medical reports of foreign workers in this country.

[4] At all times relevant to these appeals, Fomema had two shareholders. They were Anjur Dinamik Sdn Bhd or ADSB (the 5th respondent in the intervention appeal) and KDMB. ADSB had three shareholders, namely, the plaintiffs and the 1st, 2nd and 15th defendants. In their action, the plaintiffs impugned certain transactions that had been entered into between ADSB and some of the defendants in the court below who are not parties to either appeal before us. But the plaintiffs claimed no relief whatsoever either against ADSB or Fomema. KDMB based its application to intervene and be added as a defendant on two agreements it had with ADSB. These are a joint venture agreement dated 18 July 1995 and a shareholders agreement dated 3 October 1996. As explained by its counsel during argument, KDMB's case seems to be this. The plaintiffs in their action are claiming monies and other

benefits from the 1st, 2nd and 15th defendants for their – and here I shall use a neutral term – alleged misconduct as a result of which they suffered loss. However, KDMB contends that while there was misconduct on the part of the aforementioned defendants, the compensation for breach of duty is payable to KDMB and not to the plaintiffs. It is here pertinent to note that the 1st, 2nd and 15th defendants were not parties to either of the aforesaid agreements. Those then are the undisputed facts relevant to the intervention appeal. And upon these facts the only question is whether the learned judge was correct in holding that KDMB had made out a case for intervention.

[5] In resolving that question, I begin, as I must, with RHC O. 15 r. 6(2)(b). It reads:

> (2) At any stage of the proceedings in any cause or matter the court may on such terms as it thinks just and either of its own motion or on application:
>
> (b) order any of the following persons to be added as a party, namely:
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> (i) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter …

Two observations are called for. In the first place, it is important to note that the rule permits intervention on two separate grounds. In sub-para. (i) it enables intervention where the presence of a party before the court is necessary. In sub para. (ii) intervention is enabled where a party to an action claims relief or a remedy which will materially affect the non-party-intervener's rights. In such circumstances, the court is empowered to permit intervention if it forms the view that to do so will be just and convenient. Take the obvious case of an action for specific

enforcement of a contract for the sale of immovable property brought by a purchaser against the vendor. If the vendor has re-sold the property to a third party, such third party may be entitled to intervene and be added as a party to the purchaser's action because his rights under the second sale will be materially affected by the relief claimed by the plaintiff-purchaser. In such a case what the rule does is "to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity to be heard." (*Pegang Mining Co Ltd v. Choong Sam & Ors* [1969] 2 MLJ 52, per Lord Diplock.) The second observation I would make is this. The court should not read the requirements of the rule as though they are words in a penal statute calling for strict compliance with them before intervention may be permitted. Put differently, the rule should be widely or liberally interpreted. (See, *Pegang Mining Co Ltd v. Choong Sam*). But the court should also bear in mind that "it must be an interpretation of the language used" by the rule because the rule "does not give power to add a party whenever it is just or convenient to do so" (*Vandervell Trustees Limited v. White* [1971] AC 912, per Viscount Dilhorne). In other words, no "process of giving a wide or liberal interpretation to the rule can be employed to alter it or to give it an enlarged meaning which, on a fair and reasonable interpretation, it does not bear." *(Vandervell Trustees Limited v. White per Lord Morris)*.

[6] RHC O. 15 r. 6(2)(b) has been considered in a number of cases. No useful purpose will be served by going through them all and I find it sufficient to quote from three authorities. The first is *Vandervell Trustees Limited v. White & Ors* where the issue arose as to whether the Inland Revenue Commissioners should be permitted to intervene and be added as a party to the action. Intervention was refused on the ground that neither limb of the rule applied to the facts there. Lord Diplock said:

> A party to an action must be a person who claims in that action some relief against another party to the action or against who some relief is claimed by another party to the action. There is, in my view, no jurisdiction to add as a party to an existing action a person by and against whom no relief which the court has jurisdiction to grant can be claimed.

[7] The next is *Spelling Goldberg Productions v. B.P.C. Publishing Ltd* [1981] RPC 280. In that case, sub-paragraph (ii) of the rule came up for consideration on an application to intervene in an appeal pending before the English Court of Appeal. When considering the phrase "may exist a question or issue" appearing in the sub-paragraph, Bridge LJ (as he then was) said:

> Clearly what is contemplated is that, at the time when an order for joinder is made under this provision, the question or issue arising out of, or relating to, or connected with the relief or remedy claimed in the cause already arises between the party seeking to be joined and one or other of the existing parties to the litigation. It being conceded that no such question or issue arises here, it seems to me that there is no jurisdiction in the court to accede to the application that these interveners should be joined in the pending appeal.

[8] Lastly, there is *Sri Permata Sdn Bhd v. PPH Realty Sdn Bhd; Lingkaran Cemerlang Sdn Bhd (Interveners)* [2001] 7 CLJ 633 where my learned brother Abdull Hamid Embong held that a parties rights should be directly affected before intervention may be permitted. He said:

> Looking at these authorities, both domestic and foreign, including the recent Court of Appeal decision of *Soo Hong & Leong Kew Hoi & Ors v. United Malayan Banking Corp Bhd & Anor* [1997] 1 MLJ 690, which confirmed the Pegang Mining test, one factor that came out in consonance to qualify the 'rights against or liabilities to' test is that the intervening party must have been 'directly affected' by any order made by the court on the subject matter.

[9] Now apply the approach suggested by the foregoing cases to the present instance. It is clear from the written evidence that was put before the High Court that KDMB is not the person who was wronged by the alleged misconduct of the 1st, 2nd and 15th defendants. Put at its highest, the plaintiff's pleaded case and KDMB's evidence in support of its summons to intervene shows that the real victim was Fomema. Being a limited company, it enjoys a personality that is separate and distinct from its shareholders and directors. If it suffered a loss because of what the 1st, 2nd and 15th defendants did or did not do, then it is its loss and not KDMB's loss. This cardinal principle of company law was established in *Salomon v. Salomon & Co Ltd* [1897] AC 22 and exemplified in *Macaura v. Northern Assurance Co. Ltd. & Ors* [1925] AC 619, where Lord Buckmaster said:

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> Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the Company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up.

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[10] In *Law Kam Loy & Anor v. Boltex Sdn Bhd & Ors* [2005] 3 CLJ 355 I had occasion to discuss the more recent cases on the subject and had this to say about the present state of the law:

> In my judgment, in the light of the more recent authorities such
C as *Adams v. Cape Industries Plc* [1990] Ch 433 it is not open to the courts to disregard the corporate veil purely on the ground that it is in the interests of justice to do so. It is also my respectful view that the special circumstances to which Lord Keith referred (in *Woolfson v. Strathclyde Regional Council* [1978] SLT 159) include cases where there is either actual fraud at common
D law or some inequitable or unconscionable conduct amounting to fraud in equity.

[11] Based on what I have said thus far it is clear that KDMB is not affected by any loss that might have been suffered by
E Fomema. Hence it is not a person that may be directly affected by any judgment that the High Court may give in the main action.

[12] That brings me to the joint venture agreement and the shareholders agreement on which the High Court relied to permit
F intervention. It was submitted by learned counsel for KDMB that these agreements were breached. As I have already said, the 1st, 2nd and 15th defendants are not parties to those agreements. It follows that KDMB cannot seek to hold them liable for any breach of these agreements by reason of the doctrine of privity of
G contract. In my judgment, KDMB must seek recourse against the parties to those agreements by way of a separate suit.

[13] What the case then comes to is this. KDMB is not a necessary party because it will not be directly affected by any order that may be made by the High Court on the merits of the
H plaintiffs' claim against the existing defendants. Further, since no claim has been made against it by the plaintiffs or any other existing party to the action, it has failed to bring itself within the sub-para. (ii) of the rule. Accordingly the High Court had no jurisdiction to permit KDMB to intervene and be added as a party
I to the suit.

[14] I am conscious that the power to permit intervention is discretionary in nature. In accordance with settled principles, in an appeal against the exercise of discretion, the initial function of this court is one of review only. But those very principles also recognise that this court may intervene where the holder of a discretion takes into account irrelevant considerations or fails to take into account relevant considerations or misdirects himself or herself in law or has misapprehended the facts or where the order he or she makes is unjust. See, *Lian Keow Sdn Bhd v. Overseas Credit Finance Bhd* [1982] CLJ 350; [1982] CLJ (Rep) 182; *Maxwell v. Keun* [1928] 1 KB 645. In the present case, I am entirely satisfied that the High Court fell into serious error when exercising its discretion in the way in which it did.

[15] For the reasons already given, I would allow the intervention appeal, that is to say, Civil Appeal No. W-02-339-2005 and set aside the orders of the High Court. KDMB's summons to intervene dated 28 November 2003 is dismissed. KDMB must pay the costs of this appeal and those incurred in the court below. The deposit in court shall be refunded to the appellants.

[16] It follows from what I have said thus far that Civil Appeal No. W-02-59-2008 must also fail. If KDMB ought not to have been added as a party, the propriety of its pleading can hardly arise. I would therefore dismiss Civil Appeal No. W-02-59-2008 with costs and affirm the orders of the High Court. A word about costs. Since both appeals were heard together and only one argument was addressed mainly on the intervention appeal, I would direct that the taxing registrar not to permit any getting up in the respondents' favour in respect of Civil Appeal No. W-02-59-2008. In short, there shall be only one item of getting up permitted and that will be in Civil Appeal No. W-02-339-2005. The respondents in Civil Appeal No. W-02-59-2008 shall however be entitled to their out of pockets and profit costs. The deposit in this appeal shall be paid out to the respondents to account of their taxed costs.

[17] My learned brother Abdull Hamid bin Embong and my learned sister Heliliah bt Mohd Yusof, JJCA have read this judgment in draft and have expressed their agreement with it.